Supreme Court, U.S.
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No. _____

In the Supreme Court of the United States
October Term, 1994

William A. Calvo, III,
Petitioner
- against -
The Florida Bar
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA

APPENDIX VOLUME III

William A. Calvo, III, *Pro Se*
11355 Southeast 54th Avenue; Belleview, Florida 34420
(904) 245-4126

Dated: May 8, 1994

10-5 PM

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Representative Affidavit

In the United States District Court

For the Southern District of Florida

In the Matter of

William A. Calvo, III

No. 94-

AFFIDAVIT IN SUPPORT OF

MOTION FOR DIFFERENT DISPOSITION

STATE OF FLORIDA }

MARION COUNTY } ss.:

BEFORE ME, an officer duly authorized to administer oaths by the State of Florida, did personally appear on this 30th day of March, 1994, **WILLIAM A. CALVO, III,** known to me, who, being duly sworn, did state that he prepared the 46 page narrative annexed hereto and made a part hereof as exhibit A, and that based on his information and belief, it accurately reflects the matters described therein.

William A. Calvo, III

11355 Southeast 54th Avenue; Belleview, Florida 34420

Telephone Number (904) 245-1850

My commission expires:

_____

Angel N. Craig, Notary Public

Representative Narrative

The Electronics Warehouse Affair

Chapter One: Background

During August of 1984, I was introduced to Edward Bremer ("Bremer"), the president of the Electronics Warehouse, Inc., a Connecticut corporation ("Warehouse"), by Russell K. Gallagher ("Gallagher"), a recent acquaintance engaged in the stock brokerage business through a sole proprietorship (Gallagher & Company").

Warehouse was in the middle of a public offering but needed to amend its registration statement to reflect a change in underwriter and offering structure. I was asked to drop everything in order to make the required changes on a special project basis and further, was asked to consider replacing Gary Granai, the legal counsel to

Warehouse ("Granai"). I agreed to the project for a fee of $15,000, to be paid following the effective date of the required changes;[1] however, after talking with Granai, I declined to replace him.

I completed an initial hand-written[2] draft of the changes required to the registration statement which was picked up at my office by Bremer and taken to a typing service for incorporation into the materials to be filed by Granai with the Securities and Exchange Commission. At that time I was asked if I would consider filing the amended registration materials on behalf of Gallagher with the National Association of Securities Dealers, Inc. (the "NASD"), and with state securities ("blue sky") regulators. I indicated that I would be glad to assume such role and would charge an additional $15,000 ($5,000 to be paid immediately, and the balance at closing on the

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1. I had quoted a fee of between $7,500 and $10,000, *if it was prepaid*. However, Bremer had insisted on a delayed payment and I correspondingly increased the fee, which he accepted.

2. My law firm had just purchased a sophisticated multi-user computer system, which promptly crashed, thus we were unable to type our own materials.

offering). Messrs. Bremer and Gallagher accepted the proposal and were to provide me with the initial $5,000 retainer required.

Bremer had my handwritten changes incorporated into a registration statement and filed with the Securities and Exchange Commission by Gary Granai as post effective amendment number one.[3] The amended registration statement listed my law firm as legal counsel to the underwriter; however, no consent to the use of our name in that capacity was obtained from us or filed with the Securities and Exchange Commission.[4]

Notwithstanding the agreement with Messrs. Bremer and Gallagher concerning the retention of my law firm to assist Gallagher with NASD and blue sky filings, on September 24, 1984, the law firm of Robert

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3. The only document used in the Warehouse offering with which my law firm was involved. Such fact was admitted by Bremer in a number of affidavits to the Securities and Exchange Commission.

4. Three subsequent post effective amendments were filed by Warehouse with the Securities and Exchange Commission, only the last of which became effective. My firm had no involvement therewith, already having been replaced by the Beer-Wilkes Firm.

Beer and Stephen Wilkes in New York (the "Beer-Wilkes Firm") was formally retained by Bremer[5] to perform such functions, purportedly because Mr. Beer, as the former chief enforcement counsel with the NASD, could have the changed registration statement approved by the NASD on an expedited basis. Thereafter, all NASD and blue sky filings were undertaken by the Beer-Wilkes Firm.[6] I was informed of such decision in late September of 1984, and thereafter, on November 8, 1984, the revised registration statement was declared effective.

Notwithstanding our removal from such assignment, my wife and I were socializing with Gallagher and his wife Laura, and my firm started representation of Gallagher & Company on other matters, most notably the

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5. A retainer letter was signed by the Beer-Wilkes firm on that date.

6. There was substantial correspondence concerning blue sky matters between the Beer-Wilkes Firm and the Gallaghers. That would have been appropriate only if the Beer-Wilkes Firm was acting as underwriter's counsel but would have been utterly inappropriate if my firm was playing such role because attorneys are not permitted to communicate directly with persons represented by other attorneys on matters subject to such representation.

underwriting of securities for Dennison, Inc. (an offering in which, as in Warehouse, Barnett Bank acted as escrow agent). Thus, although it was our understanding that we had been replaced by the Beer-Wilkes firm in the Warehouse matter, we considered the Gallaghers and Gallagher & Company as our clients on other matters.

During January of 1985, I was approached by Gallagher concerning the possibility of retaining my law firm to assist with the closing on the Warehouse offering. I indicated that we would assume such role if we were paid $5,000, plus costs and disbursements, for such services.[7] Because the closing did not take place, we were never retained, although we were provided with proposed forms of closing documents to review. Shortly thereafter, my firm received a series of letters between Bremer, Granai and Barnett Bank (the escrow agent for the public offering), pursuant to which the Warehouse offering was

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7. The price was significantly less than the initial $15,000 quoted in September of 1984, because the responsibilities were substantially less, all of the due diligence, NASD filings and Blue Sky filings had been completed by the Beer-Wilkes Firm.

extended until April 22, 1985. The letters were placed in our closed Warehouse file without review or action since we were not acting as legal counsel to Gallagher & Company on that matter.

During February of 1985, I was requested by Granai to provide him with the names of securities industry professionals who could assist in the placement of the Warehouse offering and I gave him the names of three people, Francesca Daniels, David Jordan and Hermann Burckhardt. Mr. Granai gave the names to Bremer and Gallagher.[8] Messrs. Bremer, Granai and Gallagher thereafter contacted Ms. Daniels, and arranged a meeting in Florida to discuss her participation. I was present for the meeting with Ms. Daniels in Florida because she was a personal friend, stayed at my home during her visit, and I formally introduced her to Messrs. Bremer and Gallagher. Mr. Granai did not attend the meeting.

Using her contacts, Ms. Daniels arranged an introduction to a co-underwriter and requested that she be

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8. The Gallaghers already knew Mr. Jordan.

hired as a financial consultant by Warehouse. Bremer declined to meet her financial terms and no relationship was ever entered into. Bremer contacted both Jordan and Burckhardt but they were unable to assist him. The only matters that Bremer discussed with Ms. Daniels and Messrs. Jordan and Burckhardt were possible introduction to stock brokerage firms that might have an interest in acting as selected dealers or co-underwriters in the Warehouse offering.[9]

During late March of 1985, I received a telephone call from Granai informing me that Bremer had been indicted for mail fraud in an unrelated matter. He indicated that he was representing Bremer in the matter and that his investigation indicated that Bremer was innocent and that the indictment was a ploy to force him to testify against a friend. I responded by advising Granai that either the offering should be terminated or Bremer

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9. Bremer claimed to the Securities and Exchange Commission in sworn affidavits that they were introduced as potential lenders, however, he recanted such sworn statements at the Florida Bar final hearing (described later).

should resign from all Warehouse roles and a post effective amendment to the registration statement filed disclosing such resignation.[10] I thereupon immediately contacted Gallagher and advised him of my conversation with Granai. Sometime shortly thereafter Granai again called indicating that he had talked with Bremer and that Bremer had agreed to resign. He also indicated that a post effective amendment to the registration statement would be filed.[11]

I did not hear from anyone associated with the Warehouse offering again until Monday, April 15, 1985, when I was contacted by Granai concerning whether or not Bremer could legally guarantee that an investor in the Warehouse offering would receive a profit. I

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10. Bremer admitted such fact in one sworn affidavit, denied it in others and denied it at the Florida Bar hearings.

11. In my conversations with Granai and Gallagher concerning the Bremer matter, I did not consider that I was acting as legal counsel to Gallagher, nor did I bill for such services. Rather, as I often did with many attorneys and stock brokers, I felt I was acting gratuitously, in a friendly endeavor to solicit future business or solidify existing relationships.

responded that, in my opinion, he could not and expressed surprise that the offering was still alive.[12] I also asked as to the status of the registration statement amendment and Bremer's indictment. Granai informed me that an amendment to the registration statement had not been required because Bremer had obtained politically influential legal counsel who had managed to have the indictment "dropped."

After Granai's telephone call on Monday April 15, 1985, no one from the Warehouse offering group (Granai, Bremer or Gallagher) contacted me until Friday morning, April 19, 1985, when all of them walked into my law firm and stated that they were closing on the Warehouse offering, that day![13]

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12. Granai confirmed my surprise in his testimony to the Securities and Exchange Commission.

13. Bremer refused to admit such fact at the Florida Bar final hearing; however, in sworn affidavits provided to the Securities and Exchange Commission many years earlier, Bremer admitted that he and Granai flew into Fort Lauderdale on the evening of April 18, 1985. Furthermore, the Bremer tapes (described hereafter) included conversations between Bremer and Granai were they alluded to the fact that I was being kept in the dark about the closing until the last minute, when it would be "sprung on me." Evidently, Bremer, Granai and Gal-

No one had made any appointment and my firm was totally unprepared to participate in a closing for the Warehouse offering. Nonetheless, I made my conference room available to "my friend" Gallagher, and to Messrs. Bremer and Granai for certain pre-closing activities. We also provided one of our law clerks, Joe Caruncho,[14] to assist in compiling a closing document check list.

During the morning of April 19, 1985, I had a full schedule of appointments and was able to meet with the Warehouse offering group only as a courtesy, and even then, only intermittently. During a brief interlude, they came into my offices, at the request of Gallagher, to ask for my views on certain matters that had apparently first come up. These dealt with three issues:

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lagher expected that I would agree to represent Gallagher at the closing; however, because of the lack of adequate preparation time, I did not!

14. He was awaiting admission to the Florida Bar, having already taken and passed the required examinations. He had been hired by my firm based on the effusive recommendations of the administrator of the Securities and Exchange Commission's Atlanta Regional Office, where he had been employed the previous summer.

1. Bremer and Granai had informed Gallagher that as a result of the delay in closing the offering, Bremer (or a Bremer affiliate) had been forced to advance more than $350,000 to Warehouse for purchase of inventory, supplies and services disclosed in the use of proceeds section of the registration statement, and that Bremer was to be reimbursed, at the closing, for such advances;

2. Bremer and Granai had informed Gallagher that Bremer, or a Bremer affiliate, was prepared to purchase up to $250,000 of the securities offered by Warehouse if they were not otherwise subscribed for in the offering;[15] and

3. Bremer had sold his receivable from the

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15. I did not focus on the issue of whether or not such subscription was required to meet minimum offering requirements because Bremer was still talking about an over-subscribed offering, and the $250,000 subscription was well within the $300,000 difference between the minimum offering and the maximum offering. In hindsight, the other loans were probably not disclosed to me because they would have raised such issue!

Warehouse offering in order to purchase such Warehouse securities.

Gallagher wanted to know whether or not I was aware of any reason why such matters might be improper. I made it clear that I did not have the time to legally research the issues or verify the underlying facts;[16] however, after a brief mental analysis as well as inquiries to Bremer (to verify that his advances corresponded to items specifically allocated in the use of proceeds section of the registration statement), I replied that, except for restrictions on Gallagher's participation in arranging financing in violation of Regulation T, I knew of no impediments.[17]

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16. The Securities and Exchange Commission clearly took the position that I had provided neither oral nor written opinions to anyone concerning closing on the Warehouse offering, during the appeal of the Gallaghers Securities and Exchange Commission proceedings to the United States Court of Appeal for the Eleventh Circuit.

17. My conclusion was influenced by the fact that the proposed $250,000 investment by Bremer, was below the $300,000 difference between the minimum and maximum offering disclosed in the prospectus, and thus, did not alert me to any pre-planned machinations to attain the minimum offering.

Gallagher responded, supported by Bremer and Granai, that he had played no role in securing the funds Bremer intended to use to purchase securities in the offering.

I suggested to Gallagher that verification of the Bremer advances should be reflected in the cold comfort letter to be provided at closing by the independent accountant for Warehouse. Bremer and Granai agreed but indicated that such a cold comfort letter could not be provided that day because the Warehouse accountant was in Connecticut. I then suggested to Gallagher that the offering proceeds that were to be paid to Warehouse be held in trust by Granai until the cold comfort letter and certain other closing instruments were provided to Gallagher. He accepted that suggestion and Bremer and Granai also agreed.[18]

At that point, a copy of the opinion of counsel to be provided by Granai was called to my attention, and I

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18. Such fact was confirmed in a May 1, 1985, letter from me to Granai, which the Securities and Exchange Commission obtained from Granai's files.

noticed that a paragraph specifically disclaimed an opinion concerning the Bremer indictment. I informed Gallagher that, in my opinion, such language was not satisfactory, and that he needed to verify that the indictment had been dropped, either through an amendment to Granai's opinion letter or by a formal certification of some sort. Granai agreed to modify his opinion letter, but I also found such modification inadequate. Granai indicated that because he had been replaced as counsel to Bremer in the indictment matter he could not properly opine thereon and it was suggested by Bremer, after a purported call to his new indictment counsel, that his new indictment counsel would provide required documentation at the time that the accountant's cold comfort letter was provided.[19] Gallagher accepted such compromise, with the understanding that Granai would not release proceeds of the offering that he was to hold in trust until such verification was provided.

Mr. Granai then held a five minute, quasi seminar

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19. Such fact was confirmed by Joe Caruncho, acting as a witness against me, in the Florida Bar hearing.

for his client and Gallagher, advising them of provisions of securities laws that would apply to insiders after the closing. I also joined in comments, and both Granai and I stressed that there were significant restrictions on the transactions that Bremer could undertake in the securities he was purchasing. My recollection is that we discussed the application of Sections 13(d) and 16(b) of the Securities Exchange Act of 1934, as amended, and the application of Rule 144 to control stock transactions. We were wrong about sections 13(d) and 16(b), because Warehouse was exempt from their application. We also discussed the fact that Bremer's subscription would have to be cut back, to the extent others wanted such stock, because of NASD "hot issue" rules (at that time I had been convinced that the offering was likely to be over-subscribed). During that time Granai was also insistent that Gallagher not charge a commission on securities that might be purchased by Bremer or Bremer affiliates but Gallagher refused, indicating that he would need all proceeds that he was contractually entitled to in order to maintain a liquid market in Warehouse stock.[20]

It was then lunch time and the Warehouse group invited me and Nina Gordon, my senior associate (to whom Granai referred as the SEC at my firm) to join them for lunch. I suggested Rolands', a popular restaurant located near my office, and we left in separate cars. While entering Rolands I met Paul C. Jenkins, a friend who was employed as a salesman with Star of David Memorial Gardens in Broward County, Florida, and introduced him to the group.[21] We then sat for lunch in a large booth at the rear of the restaurant. Because we were all receiving a number of calls, the owner plugged a telephone near our booth. While I was not privy to the calls being received by Bremer, Granai and Gallagher, I assumed that they were the normal flurry of calls from

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20. I did not charge for such advice nor did I feel that I had resumed a formal role in the Warehouse offering.

21. At that time, Mr. Jenkins was experiencing financial difficulties and had borrowed several thousand dollars from me. Nonetheless, Bremer subsequently claimed that I introduced him to Mr. Jenkins for purposes of arranging a huge loan to Bremer, a claim obviously denied by Mr. Jenkins.

investors, selected dealers and others that normally accompany the period prior to and following closing on a public offering. I left early, having a busy after lunch schedule, but Nina Gordon remained.

That afternoon I received a telephone call from one of the Warehouse offering group, I believe it was Granai, who told me that they had decided to postpone the closing until Monday because of logistical problems. He requested that, as a professional courtesy, I prepare disbursement instructions for the escrow agent specifying that the person who had purchased Bremer's account receivable ("Richmond") was to be paid directly from the closing, and, perhaps foolishly and without giving it very much thought, I agreed. Granai indicated that Richmond would be calling my offices to verify that the disbursement letter provided for payment to him directly from the closing proceeds, and Richmond in fact made such a call.[22]

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22. Richmond had also verified such fact directly with personnel at Barnett Bank, who on Friday April 19, 1985, had already received such instructions directly from Bremer and Granai.

After work that Friday afternoon (as was our custom at the time) my wife and I went to Shooters, a popular waterfront restaurant and lounge in Fort Lauderdale. When we got there, we ran into an advertising executive with a small local firm, Bobby Baldrica, who was accompanied by a local real estate broker, Jim Scherer, and sat at their table. They were celebrating a new account or something and we joined them for some champagne. While we were seated with Messrs. Baldrica and Scherer, a group of people, including Bremer, Granai and Gallagher, approached the table, and we introduced the people we knew. The gathering was purely spontaneous and involved no pre-planning by anyone. Messrs. Scherer and Baldrica stayed briefly, joined in conversations, and then left. My wife and I left shortly thereafter.[23]

The following Monday, some time around one

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23. Bremer subsequently claimed that I had pre-planned the meeting for the purpose of arranging loans to close the Warehouse offering. However, such claims were denied by Messrs. Baldrica and Scherer, who, at such time, like Mr. Jenkins, were in no position to make loans to anyone. In addition, I had never even heard of Mr. Scherer prior to that day.

o'clock in the afternoon, I received a telephone call from someone employed with the escrow agent indicating that funds required to close had been deposited, and that a closing on the Warehouse offering had started. The escrow agent's office was about five minutes away, by car, and I left to see about collecting the $15,000 fee for our work on post-effective amendment number one for Warehouse, which we had earned during August and September of the prior year.

When I arrived, I distributed copies of the disbursement letter that I had been asked to prepare, but which I had theretofore neglected to deliver; however, the escrow agent had already received identical disbursement instructions from Messrs. Granai, Gallagher and Bremer, and had engaged in detailed discussions concerning the Richmond payment with Mr. Richmond.

During the closing, a broker outside the closing room (with a name that sounded like Kolonosky) was insisting that the offering not close until a $250,000 wire from his clients was received into the escrow account, however, the escrow agent had determined that the last

second for receipt of proceeds into escrow was at two o'clock, and closing, without the Kolonosky proceeds, was declared ended by the escrow agent at that time. The final tally on the escrow account was in the area of $1,230,000+ and the offering would have been close to oversubscribed if the Kolonosky wire had arrived on time.[24]

I stayed for several minutes, received our firm's check, and left. I did not attend the subsequent closing party. My firm provided no closing opinions, closing statements or other traditional materials provided by underwriter's counsel at a securities closing. I neither billed nor received any payments in conjunction with the closing, or indeed, in conjunction with any activities on behalf of either Warehouse or Gallagher, except for payment of the invoice for services during August and Sep-

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24. Because of the purported Kolonosky wire, we anticipated that the offering would have been close to oversubscribed, and that the $250,000 Bremer stock purchase would not have involved the minimum offering, but rather, the difference between the minimum offering and the maximum. Apparently, the Kolonosky transaction was a phony ploy designed by Bremer to deceive Gallagher and me.

tember of 1984, because it was my unequivocal impression that since our replacement by the Beer-Wilkes firm during the fall of 1984, we had not acted or served as legal counsel for any Warehouse related matters (although we had discussed retention for closing purposes during January of 1985).

The Beer-Wilkes Firm was paid a fee of more than $15,500, from the offering proceeds for their role in the offering.

During early May of 1985, Gallagher told me that he had not yet obtained the cold comfort letter, indictment dismissal certification or his underwriter's warrants from Bremer and requested my help. In response, I wrote to Granai suggesting that his client was probably tired of waiting for the closing proceeds and that he should promptly provide the required documents to Gallagher.[25] Gallagher did not seek any further assistance on that matter thereafter.

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25. Granai provided such letter to the Securities and Exchange Commission during the Warehouse investigation.

During June of 1985, Bremer and Gallagher paid an unannounced visit to my office during which Bremer appeared to be attempting to force Gallagher to buy a block of the Warehouse stock purchased by Bremer at the closing. He implied that Granai or someone else thought that there might have been something wrong with the purchase of stock by Bremer. I responded by asking the following series of questions: (1) Had Bremer actually been entitled to refund for advances from the closing proceeds; (2) Had such advances in fact represented expenses for which proceeds of the offering had been allocated in the use of proceeds section of the Warehouse prospectus; (3) Had Gallagher, in fact, avoided any assistance in arranging the personal loan used by Bremer to buy his Warehouse stock; and, (4) Had unaffiliated subscribers who wanted to participate in the offering been given a preferential right to subscribe to the stock purchased by Bremer. Bremer replied in the affirmative and I indicated that I knew of nothing wrong with such offering. There appeared to be some other problem involving the payment by Gallagher to Bremer

of funds for a small sale of Warehouse stock (I assumed under Rule 144's control stock provisions), but I neither concentrated on such dispute, nor have any meaningful recollection pertaining thereto.

Chapter Two: The Securities and Exchange Commission Investigation

During the summer of 1985, I came to know Gary Granai more closely (we had first met on April 19, 1985) and had agreed to an of counsel relationship with him. During late July of 1985, while I was in New York on a business trip with Granai and Arthur J. Leibell, another potential member of my firm, I was informed by my office that the Securities and Exchange Commission had subpoenaed all of our Warehouse files. Granai could think of no reason for the subpoena and I immediately contacted Roger Sherman, the Securities and Exchange Commission attorney involved, and requested details of the investigation so that I could properly advise Gallagher concerning whether or not he should cease trading Warehouse stock. I then placed calls to Bremer and Gallagher, both of whom professed not to know what was

wrong. On at least one occasion, I indicated to someone at Bremer's office that unless I could be assured that there were no legal problems involving Warehouse I would have to recommend to Gallagher that he cease trading its stock.[26]

During August of 1985, I met with Granai, the Gallaghers, Arthur J. Leibell, (a former Securities and Exchange Commission staff member who had agreed to join my firm as a partner) and two unrelated attorneys who had also been Securities and Exchange Commission staff members (Jack Stein and another attorney with his firm) in Fort Lauderdale for purposes of determining what might be going on with Warehouse. I carefully questioned Gallagher and Granai, but we could think of nothing that might have been wrong.

Sometime during the fall of 1985, the Securities and Exchange Commission subpoenaed me for testimony concerning Warehouse. During that deposition I found out, for the first time, that:

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26. Such recommendation was reflected in a conversation with Granai taped by Bremer.

1. Bremer had lied about making advances to Warehouse and was, in fact, not entitled to any portion of the proceeds at closing, and had no receivable to sell to Richmond;
2. Bremer had purchased, not the $250,000 in securities indicated during the April 19, 1985, discussions, but rather in excess of $600,000 in securities, and had paid for all such stock with borrowed funds which were paid back immediately after the closing, not with funds to which he had any claims but with proceeds of the offering. In addition, he also used proceeds of the offering to pay huge commissions to the lenders;
3. The escrow agent had erroneously calculated the escrow termination date, as a result of which, the escrow agent should have returned all the proceeds in the escrow account to the investors on April 8, 1985;
4. It appeared, but the Securities and Exchange Commission attorney would not confirm, that

Bremer's indictment had not, in fact been dropped; and

5. Granai had released the proceeds of the offering to Bremer immediately after the closing, notwithstanding his promise to hold them until Gallagher received the accountant's cold comfort letter, the certification that Bremer's indictment had been dropped, and the underwriter's warrants.

After the deposition I questioned Gallagher about the documents that Bremer and Granai were to provide him prior to release by Granai of the proceeds to Warehouse and was informed that he had only been provided with the underwriter's warrant, but that he had forgotten about the other requirements.

I also questioned Granai, and he claimed that he:

1. Did not recall the trust arrangement involved in the closing;[27]

2. Knew about one additional loan to Bremer,

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27. Despite my reference thereto in the May 1, 1985 letter.

but had verified that Bremer was owed in excess of $450,000 by Warehouse through personal inspection of inventory, equipment, catalogues, *etc.*;

3. Believed that the stock purchased by Bremer was not restricted under Rule 144, but merely subject to the Section 16(b) restriction on short term profits, and that Gallagher had agreed to resell it all for Bremer immediately following the closing;

4. Had taped conversations with Bremer concerning Bremer's allegations that the indictment had been dropped, and could provide me with copies thereof; and

5. Was amazed that the escrow agent had miscalculated the offering termination date.

Chapter Three: The Securities and Exchange Commission Litigation

Background

Immediately prior to Christmas, 1985,[28] Jack Stein, an attorney who had accompanied me to my investigative testimony before the Securities and Exchange Commission, was informed that although the testimony from different witnesses had been contradictory, the Securities and Exchange Commission concluded that I had plotted the entire fraudulent closing. That conclusion was based on testimony provided by Bremer and on a secret submission to the Securities and Exchange Commission by Barnett Bank, the escrow agent.[29] Apparently, Barnett Bank had agreed to provide standby funds required to make investors whole,[30] in exchange for not being

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28. Warehouse related matters always appear to occur around Christmas.

29. Barnett Bank has succeeded in keeping its testimony to and agreements with the Securities and Exchange Commission secret through a court order sealing the files. However, un-confirmed information has leaked out on which the discussion thereof contained in this narrative is based.

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prosecuted[31] and in exchange for the initiation of an action by a receiver to recoup funds from the other persons involved in the Warehouse closing,[32] from which Barnett Bank would be reimbursed.[33]

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30. During the early stage of the litigation, an attorney for Barnett Bank contacted me and the Gallaghers, offering us non-recourse loans against vastly inadequate security (in my case, a $500,000 loan against $30,000 in equity in my house), if we used the proceeds to settle the Warehouse receiver's action. Being innocent and unwilling to sell ourselves to protect Barnett Bank, we declined.

31. Prosecution would have been very problematic for Barnett Bank because it had been enjoined from committing future securities law violations in conjunction with handling securities escrow accounts, and an additional violation would have subjected it to criminal contempt sanctions, as well as prosecution under criminal aspects of federal securities laws. That would have had a very negative impact on its aggressive acquisition program, in addition to the myriad of associated criminal problems, including possible invocation of federal RICO laws.

32. Evidently, the receiver collected funds only from Granai and from me (I returned our $15,000 fee, plus $10,000). Bremer and Richmond, who accounted for more than half of the proceeds, were allowed to keep their "loot" in exchange for favorable testimony, and the Gallagher's recently settled the receiver's $165,000 claim in exchange for $8,000.

33. Such reimbursement was a direct violation of the Securities and Exchange Commission's policy against indemnification in securities law cases, and is illustrative of the degree and amount of political clout that Barnett Bank was able to bring to bear in the Warehouse affair.

The Beer-Wilkes firm had, apparently using their strong contacts at the Securities and Exchange Commission enforcement division,[34] persuaded the Securities and Exchange Commission to treat me as having served as underwriter's counsel during the entire offering period, and to totally ignore their role in the offering, notwithstanding the September 24, 1984 retainer agreement, the fact that they filed the Warehouse registration statement with the NASD and the state Blue Sky authorities, and, the fact that they received a substantial fee for such services.[35]

Leibell Jumps Ship

During April of 1986, the Securities and Exchange Commission prepared to file two law suits involving the Warehouse matter, an action seeking injunctions, and an action seeking to recoup the proceeds of the offering (for purposes, unbeknown to us and never publicly admitted, of reimbursing Barnett Bank). In order to increase the

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34. Beer had served as chief enforcement counsel with the National Association of Securities Dealers, Inc.

35. A fee they were never required to return!

expenses of defense, the Securities and Exchange Commission brought both proceedings in the United States District Court sitting in Hartford, Connecticut.

The intention to file the law suits was leaked by a staff member to Arthur J. Leibell, a former Securities and Exchange Commission staff member and at the time a partner in my firm ("Leibell"). Leibell was then my attorney for Warehouse related matters.[36] Rather than preparing to defend me, Leibell warned our two associates, Joe Caruncho and Nina Gordon, that continued association with me would be detrimental to their careers and made plans with Caruncho to leave before the litigation commenced. Caruncho gave notice, and, while I was representing clients in Texas, Leibell and Caruncho moved out, taking firm files, equipment and furniture that belonged to my wife. In addition, Leibell ap-

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36. Leibell and I were supposed to be stockholders in Calvo & Leibell, P.A., a Florida professional corporation originally organized by Leibell as Arthur J. Leibell, P.A., but changed when we became partners. I was also a director and the president thereof. That firm in turn, was a member of a partnership of professional corporations practicing under the name of Calvo, Bofshever, Perry & Leibell (the "CBP&L Firm").

propriated all funds in our firm accounts and arranged with Barnett Bank to have all of my family's personal accounts terminated and all of our outstanding loans called.[37]

Immediately after that weekend, the Securities and Exchange Commission served its complaints. Rather than being prepared to conduct an aggressive defense as had been planned and prepared with Leibell, I was left without an attorney, without access to funds, and with panicked clients who had been contacted by Leibell with suggestions that they join him in his new practice. I arranged to have Mark C. Perry ("Perry"), a member of the

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37. At the same time, Leibell appropriated the corporate book and stock certificates for Calvo & Leibell, P.A., and took the position that he had never issued my stock or elected me to the positions agreed upon, although Arthur J. Leibell, P.A., had accepted over $10,000 in cash as a stock subscription (which was never refunded), changed its corporate name, opened and maintained bank accounts under the new name, filed tax reports, used stationary and handled client matters and filed official court papers as Calvo & Leibell, P.A. He then filed dissolution documents for Calvo & Leibell, P.A., with the Florida Department of State and provided the Securities and Exchange Commission with an affidavit that we had never been partners and that he had never been my attorney for Warehouse related matters.

CBP&L Firm represent me, and we immediately left for a hearing in Connecticut, where the Securities and Exchange Commission sought to obtain a temporary retraining order.

The Bremer Concoction

At that hearing I learned that Bremer had been convicted of a federal misdemeanor and that the 17 count indictment had been dropped to a single count, but not dismissed. I also learned that since June of 1985, Bremer had been cooperating with the Justice Department and Securities and Exchange Commission in order to deflect blame from himself, Barnett Bank[38] and the Beer-Wilkes Firm, onto his attorney (Gary Granai), the Gallaghers and me.

Evidently, Bremer and Granai had counted on pres-

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38. Prosecution would have been very problematic for Barnett Bank because it had been enjoined from committing future securities law violations in conjunction with handling securities escrow accounts, and an additional violation would have subjected it to criminal contempt sanctions, as well as prosecution under criminal aspects of federal securities laws. That would have had a very negative impact on its aggressive acquisition program, in addition to the myriad of associated criminal problems, including possible invocation of federal RICO laws.

suring Gallagher to sell the Warehouse stock that Bremer had purchased in the offering to make up the funds Bremer had stolen from the offering proceeds in order to buy such stock and pay the associated "premiums." When, based on my advice, Gallagher had refused to make sales except as permitted under Rule 144, Bremer had panicked and met with the principals of the Beer-Wilkes Firm, where a fictional scenario was concocted, and immediately implemented. The principals of the Beer- Wilkes Firm walked Bremer over to an attorney (Marty Kaplan) with Securities and Exchange Commission and Justice Department connections even better than Beer's, and together they placed calls to the Securities and Exchange Commission and Justice Department.

The Bremer Tapes

Bremer, who had been taping his Warehouse related calls almost since the beginning of the Warehouse offering, began making a series of telephone calls and arranged a series of meetings (all taped) for the purpose of developing evidence for use by the Securities and Ex-

change Commission and Justice Department. Although Bremer sought to entrap the Gallaghers and me in such conversations, making questionable comments himself, such efforts were unsuccessful. Indeed, in one of such taped conversations, Laura Gallagher expressed to Bremer that I would never have permitted anyone to do anything wrong, and Bremer agreed.[39]

Notwithstanding the fact that the Bremer tapes (both prior to and after the meetings with the Justice Department and Securities and Exchange Commission) refuted most (if not all) aspects of the story concocted by Bremer and in at least one instance demonstrated that the Beer-Wilkes Firm was aware as early as the first week in May, 1985, that Bremer had fraudulently closed the offering, the Securities and Exchange Commission decided to conduct its litigation based on the scenario developed by the Beer-Wilkes Firm and Bremer. The trial strategy employed ever since by the Securities and Exchange

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39. Bremer has always admitted that at the time of the Warehouse closing I was of the opinion that everything was being done legally.

Commission and later, by the Florida Bar, has been to protect the Beer-Wilkes Firm and Barnett Bank by blaming the Gallaghers and me for everything, by depriving us of effective legal representation, by keeping the Bremer tapes out of official consideration, and by impairing my ability to earn sufficient funds to conduct a successful defense.

The Securities and Exchange Commission's Allegations

In essence, the allegations of the Securities and Exchange Commission, backed by affidavits from Bremer, were that:

1. After the failed January closing, I had offered to assist Bremer find emergency loans to fraudulently close the offering.[40]

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40. Bremer, in affidavits, indicated that the proposed lenders were Ms. Daniels and Messrs. Jordan and Burckhardt. Such allegations were denied by Ms. Daniels and Messrs. Jordan and Burckhardt in their own affidavits. At the Florida Bar's hearing, those allegations were contradicted by Bremer himself, who finally admitted that Ms. Daniels and Messrs. Jordan and Burckhardt had been contacted solely in conjunction with assisting in finding stock brokers interested in fully legal participation in the Warehouse offering.

2. That I knew that the Bremer indictment had not been dropped.[41]

3. That I had represented Gallagher, as

At the Florida Bar hearing, Bremer indicated that the proposed lenders I had supposedly introduced were Messrs. Jenkins, Baldrica and Scherer (previously referred to). Because of the improper disqualification of my legal counsel at the final bar hearing, the testimony of Messrs. Jenkins, Baldrica and Scherer was not available at the final hearing; however, they subsequently provided affidavits making it clear that although they had been introduced by me to Bremer, Granai and Gallagher, either at Rolands or at Shooters, on April 19, 1985, such meetings had not been pre-planned and they had never been approached to make loans. In fact, uniformly, each expressed that at that time they had no ability to make loans to anyone for any purpose.

Bremer also sought to infer at the Florida Bar's hearing that I had a pre-existing relationship with Richmond. However, Richmond, in his transcribed testimony to the Securities and Exchange Commission and testifying on behalf of the Florida Bar:

1. Flatly denied such assertion indicating that he had seen me for the first time at the Warehouse closing;

2. Testified that the closing had started prior to my arrival there, and that I first provided Barnett Bank the disbursal instruction letter at that time;

3. Testified that he had personally confirmed with Barnett Bank, on the Friday prior to the closing, that it had been i

n41. Although I vigorously denied such fact, the Securities and Exchange Commission used

underwriter's counsel, throughout the offering period, and in such role, had an obligation to monitor events involving the Warehouse of-

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distortive motions to obtain an order from the Judge in the hereinafter discussed injunction action, deeming it admitted that I knew the indictment had been dropped, as of the date that the request for such admission had been propounded (over one year after the fact).

The order was based on a motion by the Securities and Exchange Commission asserting that I was not diligently seeking the information required to permit me to answer its request for admissions, and that they should therefore be deemed admitted. That order was thereafter used by the Securities and Exchange Commission as evidence that I knew the indictment had not been dropped, as of the closing date, more than one year earlier.

It was the specific recollection of my wife, who was my office manager at the time of the Warehouse closing, that Mr. Caruncho had been asked by me on April 19, 1985, to verify that the indictment had been dropped by making a call to either the prosecuting attorney or Bremer's indictment counsel, and that Caruncho had advised me that he had verified such fact. Mr. Caruncho denied my wife's recollection of the event. I know that either Mr. Caruncho is lying, or he and I had confused the issue, with Mr. Caruncho merely having obtained such verification from Granai, while I assumed that he was referring to either the United States Attorney or Bremer's indictment counsel.

fering and to amend the Warehouse registration statement to disclose any material changes thereto.[42]

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42. The Securities and Exchange Commission took the position that, when I prepared my handwritten changes to the registration statement during August and September of 1984, I should have disclosed that:

A. Bremer would be indicted *the following March*;

B. Bremer would *subsequently* advance funds to Warehouse for items reflected in the Use of Proceeds section of the Prospectus, and request reimbursement therefor at closing;

C. Bremer would borrow funds from Richmond to be repaid out of the offering proceeds;

D. Bremer would buy stock in the Warehouse offering the following May; and

E. The offering termination date would be miscalculated and the offering would close late.

The Securities and Exchange Commission took that position despite the fact that:

A. The instruction to Securities and Exchange Commission Form S-18 pursuant to which the Warehouse registration statement was filed makes it clear that it must be executed by the registrant's chief executive officer, chief financial officer and by a majority of its board of directors, and, that Securities and Exchange Commission Rule 478 specifies that only persons signing a registration statement may amend or withdraw it. Thus, even had I been underwriter's counsel, and, even had I been apprised of the actual facts, I would not have had standing to amend the Warehouse registration statement;

B. There was a written retainer letter with

the Beer-Wilkes firm dated September 24, 1984, pursuant to which it, in fact, prepared and filed all materials required to clear the Warehouse offering with the NASD and state Blue Sky authorities, functions admitted by the expert witness testifying for the Florida Bar at the Final Hearing to be traditionally performed by "underwriter's counsel;"

C. The Securities and Exchange Commission had provided all copies of materials directed to the underwriter's counsel to a third law firm un-associated in any manner with mine.

D. There is no current technology that would have permitted me to predict, in August and September of 1984, the specified events that took place during 1985 (although I now keep a crystal ball on my desk, next to my computer).

4. That as underwriter's counsel, I was respon-

sible for determination of the proper closing date and assuring that investor funds were returned if closing did not take place prior thereto. That determination was made despite the specific allocation of responsibility to the escrow agent contained in Securities and Exchange Commission Rule 15c-2(4).

The Securities and Exchange Commission and later the Florida Bar largely relied on the testimony of two associates at my firm,[43] Nina Gordon and Joseph Caruncho,[44] and on my conversations with Granai and

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43. Who had been warned by Leibell to disassociate themselves from me or risk their careers.

44. Nina Gordon, who had been assigned to work on the Warehouse matter during 1984, denied ever having performed any functions with reference to Warehouse other than quasi-secretarial matters, directly at my specific instructions. Her denials were contradicted by her time sheets, as well as by the testimony Laura Gallagher, Gallagher's wife, and of Joseph Caruncho concerning her role at my firm. Her testimony was distractive and not relevant, but it had the effect of making it seem that I was trying to blame an innocent young woman for my malfeasance. That was not my intention. Indeed, I agreed with her that she had very little involvement with Warehouse because my firm had only a very limited involvement with the offering. However, she indicated that she did not know that we had been replaced as legal counsel.

Gallagher during the offering period.[45]

Joe Caruncho, who had assisted Gallagher, Bremer and Granai, to prepare for a closing on the morning of April 19, 1985, by preparing a pre-closing checklist, testified that he thought the closing occurred at our offices that morning (*there is no dispute that he was mistaken, since the closing took place the following Monday, at Barnett Bank*), and that because Warehouse had counsel present, he assumed that we were representing the underwriter. However, on cross examination he admitted that prior to that Friday, he had never heard of Warehouse (despite the fact that we had weekly staff meetings at which all pending firm projects were discussed); that no one had specifically indicated to him that my firm was representing the underwriter; and, that his role had involved no substantive review of any materials, rather, it was limited to preparation of a list of documents that the underwriting agreement indicated would be provided at the closing. *More importantly, he testified at the Florida Bar Final Hearing that Bremer or Granai had promised to provide a certific*
a45. During the offering period:

1. *I had a conversation with Gallagher concerning participation by my firm in a potential closing during January of 1985;*

2. *I had conversations with both Granai and Gallagher on one day during late March of 1985, concerning the Bremer indictment;*

3. *I had one conversation with Granai on Monday, April 15, 1985, concerning the illegality of guarantees to potential investors, and the fact that the Bremer indictment had been dropped;*

Interference with Counsel

Starting with the Securities and Exchange Commission's subversion of Leibell, it successfully

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4. *On April 19, 1985, I briefly met with and made my conference room and Mr. Caruncho available to Granai, Gallagher and Bremer; had lunch at Rolands with Granai, Gallagher, Bremer, Nina Gordon and my wife; spoke by telephone with Granai and Richmond concerning the purported factored receivable; and, ran into Bremer, Granai, Gallagher and at least one other person with them, at Shooters that evening, while having drinks with Messrs. Baldrica and Scherer.*

5. *On April 22, 1985, I attended the Warehouse closing for approximately 1/2 hour to deliver the past due letter promised to Richmond and to collect the statement for my firm's services on post effective amendment number one during August and September of the prior year.*

6. *Neither I nor anyone in my firm filed any Warehouse related documents with the Securities and Exchange Commission, the National Association of Securities Dealers, Inc., or any Blue Sky authorities.*

prevented me from using legal counsel in my defense, except in conjunction with the hereinafter discussed 2e proceeding.

A. After the defection of Leibell, I paid Mark C. Perry, to represent me in the Warehouse litigation. However, at the April 1986 hearing in Connecticut, the Securities and Exchange Commission objected to his participation, based on a provision of the rules regulating the practice of law in Connecticut which could be interpreted as preventing a member of a law firm from appearing as legal counsel for another member.

B. During the injunction proceeding, I was required to retain local Connecticut counsel, counsel of record in New York (Ira Postel), and, to prepare materials for their use through attorneys employed by my firm (Calvo & Associates, P.A.) and an additional professional corporation in which I was a member after February of 1987 (Calvo, Perry

& Greene, P.A.). However, when my counsel of record sought to use attorneys in my firm to take depositions in Florida (by prior agreement with the Securities and Exchange Commission counsel) the Securities and Exchange Commission replaced such counsel, reneged on the agreement, and prevented me from taking the depositions, depriving me of my ability to conduct meaningful discovery.[46]

C. During late 1987, G. Richard Chamberlin, a long time friend, agreed to assume my representation. Specifically, he sought unsuccessfully to have a re-hearing on the Securities and Exchange Commission's motion for summary judgment based on the fact that the Securities and Exchange Commission had withheld evidence (various contradictory ver-

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46. *They then convinced the Judge in the injunction action to preclude me from taking the depositions of Bremer and Granai, or to take any other depositions unless I paid all expenses of attendance for all the parties involved, an economic impossibility for me at that time.*

sions of Bremer affidavits and the Bremer plea bargain agreement). In addition, he was to represent me in a 2e proceeding that the Securities and Exchange Commission thereafter filed and in an appeal of the District Court's decision in the injunction action.

Mr. Chamberlin was immediately subjected to a motion for sanctions for daring to file for the rehearing, and he and his wife were subjected to a series of unrelated Securities and Exchange Commission investigations. In addition, the Securities and Exchange Commission interfered in Mr. Chamberlin's application for admission to the Florida Bar. As a result of such pressures, Mr. Chamberlin was forced to withdraw from my case, weeks before oral argument in my appeal, which was resultantly waived and the appeal lost.

D. During the final hearing on the Florida Bar proceedings, many years later, Mr. Chamberlin, who had represented the Gallaghers and

me in Warehouse matters, agreed to represent me[47] and lined up a series of witnesses and prepared a comprehensive trial strategy.

At the hearing, Bar counsel succeeded in having Mr. Chamberlin excluded, claiming that he intended to call him as a rebuttal witness. Of course, not having been privy to the facts in the case, other than as an attorney, he could not have testified, nor was he in fact called. The result was that my law partner, who had no knowledge of securities laws, only a vague idea of the issues involved, and who had never met any of the witnesses, was forced to assume my defense, without any preparation time at all. Because of his total unfamiliarity with the case or the witnesses, my substitute attorney could only call me as a witness and missed the opportunity to refute the highly prejudicial, hearsay testimony of

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47. An act requiring significant courage in light of his earlier experience.

Bremer through introduction of testimony from four critical witnesses, all of whom subsequently provided affidavits (Ms. Francesca Daniels and Messrs. Paul C. Jenkins, Bobby Baldrica and James Scherer) totally contradicting Mr. Bremer. As a result, my ability to defend myself was critically impaired.

Lack of Discovery

My attempts to conduct discovery were totally circumvented by the Securities and Exchange Commission and the Florida Bar.

A. My legal counsel served the Securities and Exchange Commission with a broad request for production of documents to which the Securities and Exchange Commission responded by claiming that they had an open file policy and that I was welcome to their entire file provided I use a copy service recommended by the Boston Regional Office and that such service pick up, copy and return the materials to the Securities and Exchange

Commission themselves. We agreed and were presented with a huge quantity of material, at a copying cost of more than $3,000. Unfortunately, the copied material included numerous duplicate copies of lengthy documents (designed to run up our expenses) and did not include very important parts of the file (the Bremer affidavits and a plea agreement entered into by Bremer). It also excluded the materials filed by Barnett Bank and the agreements between Barnett Bank and the Securities and Exchange Commission which had been declared secret and sealed by the court.

B. My legal counsel scheduled a series of depositions in Florida and Connecticut, including depositions of Bremer and Granai. By agreement between the Securities and Exchange Commission attorney and the attorneys in my firm who were assisting in my defense, two attorneys from my firm, acting as local counsel

to my New York counsel of record, were to take the depositions. When we arrived at the first deposition, the Securities and Exchange Commission had changed its attorneys and refused to honor the agreement. They objected to the depositions and insisted that I take them myself (I had no litigation experience). Mark C. Perry refused, and the deposition was adjourned.

The depositions were renoticed but the Securities and Exchange Commission filed a motion asking the Court to preclude me from taking the depositions scheduled for Connecticut (Bremer's and Granai's) and requiring me to pay expenses for all parties (legal, travel, *etc.*) for the depositions in Florida. The Court granted such motion and I was prevented from deposing Bremer and Granai, and because I did not have the tens of thousands of dollars required to pay the fees and expenses of counsel for the numerous

parties, could not take any of the Florida depositions.

C. The Securities and Exchange Commission used my testimony as an important aspect of its case. It also doctored the transcript by losing 45 pages. When this was called to its attention, it "corrected" the problem by renumbering the pages making it seem that the transcript was whole. Needless to say, it then artfully took statements totally out of context and presented the testimony as a confession of recklessness.

D. During the Florida Bar proceedings, I was unable to take depositions because I was without funds to pay for them. Therefore, I was forced to rely principally on requests for admission, requests for production of documents and interrogatories. The Florida Bar refused to respond directly or meaningfully to my requests for admission, provided some documents but claimed that the first two years of

its files had "been lost;"[48] and, refused to respond to my interrogatories, rather the Florida Bar obtained a protective order from the judge in charge of the proceeding precluding me from serving more than 30 interrogatories (which I had already served), and, as to those served, providing that the Florida Bar need only respond to five.[49]

Summary Judgment

While my record counsel was on vacation in Europe, the Securities and Exchange Commission filed a motion for summary judgment, and opposed my requests for enlargement of time to respond (despite the fact that the court thereafter took more than one year to rule on the motion), as a result of which, the response was prepared by Barry Smith, an employee of Calvo, Perry & Greene, P.A., with little experience, and filed by Mr. Pos-

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48. Among the lost files were massive quantities of documents I had been required to produce, and which were never returned to me.

49. None of which were adequately responded to.

tel with no opportunity for review. The materials filed failed to include required affidavits and neither Mr. Smith nor Mr. Postel filed the thousands of pages of Securities and Exchange Commission testimony that supported the brief.

Despite the fact that the exhibits to my responsive brief were missing, and that 45 pages of text from my Securities and Exchange Commission testimony had "disappeared" the court proceeded to find that:

A. I (not the Beer-Wilkes Firm) had acted as counsel to the underwriter throughout the offering, and that as such, I was responsible for amending the Warehouse registration statement in order to reflect material changes in the information contained therein.[50]

B. I was aware of the Richmond loan and was reckless in not verifying that Bremer had in fact made advances to Warehouse. In addi-

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50. As discussed elsewhere, Securities and Exchange Commission rules did not permit me to file amendments to the registration statement, see, e.g., *Rule 478.*

tion, the Court found that even had I verified such advances, I should have amended the registration statement to disclose such advances.

C. I was aware that Bremer or a Bremer affiliate was going to purchase stock in the offering, and should have amended the registration statement to disclose such fact.

D. I was aware that Bremer had been indicted and should have amended the registration statement to disclose such fact, whether or not the indictment had been dropped. It also found that I knew the indictment had not been dropped.

E. I, and not the escrow agent, was responsible for calculating the offering period, and had no right to rely on Barnett Bank's calculation therefore; consequently, I, and not Barnett Bank, was at fault for the delayed closing and the failure of Barnett Bank to return investors' funds after April 7, 1985.[51]

F. That my continued claim of innocence was evidence that I had not (unlike Bremer) repented for my actions.

G. That although I had no history of violating law, because I was a securities attorney I would be presented with opportunities to violate securities laws in the future unless I was enjoined.

H. That in reaching such conclusions, it had not relied on Bremer's affidavits (although they were quoted from more than 30 times), but rather, solely on the excerpts from my testimony to the Securities and Exchange Commission (and that the 45 missing pages did not affect the credibility of the transcript), and on my admissions.

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51. The Court ignored the fact that until Granai's call on April 15, 1985, I thought that the offering had been terminated. It further ignored the fact that nothing I could have done on April 19, 1985, could have affected the failure of Barnett Bank to return investor funds 12 days before.

Chapter Four: The 2e Proceeding

Mr. Chamberlin started his representation of the Gallaghers and me during 1987, and, found that the Securities and Exchange Commission had withheld what he felt was crucial evidence, a Bremer affidavit contradicting the one provided by the Securities and Exchange Commission in support of its motion for summary judgment and authenticating the Bremer Tapes,[52] and, a Bremer plea bargain agreement.[53]

Mr. Chamberlin filed a motion for rehearing which was not only denied, but, the Court reprimanded Mr. Chamberlin and me for having filed it.

Immediately after denial of the motion for rehearing, the Securities and Exchange Commission suspended me from practice before it in reliance on Rule 2e of its

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52. Which the Securities and Exchange Commission had successfully excluded in the summary judgment proceeding based on their non-authentication.

53. Mr. Chamberlin then obtained the testimony of Bremer's indictment counsel to the Securities and Exchange Commission, which reflected that he was negotiating on Bremer's behalf based on Bremer's assistance in the Warehouse litigation.

Rules of Procedure, without a hearing. I was permitted to challenge such suspension in a subsequent hearing, by which time my law practice had been destroyed. The Securities and Exchange Commission proceeding sought to have me permanently barred from appearing or practicing before it.

At the 2e hearing, the judge was a Securities and Exchange Commission employee who was prohibited from reconsidering the facts of the case or the fact that a securities law violation had been committed as a result of the Securities and Exchange Commission procedural rules which governed the proceeding. *However, based on my testimony and the testimony of numerous witnesses, he found that I had been deceived by Bremer and Granai, and, that the attorneys for the Securities and Exchange Commission had engaged in unethical prosecutorial tactics by lying about the holdings of numerous cases, which placed their whole presentation in doubt.*[54] *Based on such facts, the Securities and Exchange Commission judge ruled that I*

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54. An egregious practice also engaged in by counsel to the Florida Bar.

should not be permanently barred. Rather, he agreed that a two year suspension, almost all of which had already been served as a result of the automatic suspension during the proceedings, would be appropriate, and that thereafter I should again be permitted to practice before the Securities and Exchange Commission.[55]

Chapter Five: The Florida Bar

I notified the Florida Bar of the decision and indicated that, because an appeal would, in fact, extend the period of automatic suspension, I did not intend to appeal it. The suspension period expired in July of 1990, and I made plans to resume my law practice.[56]

I initially intended to resume my practice in New

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55. During the interim, my wife and I had invested our life savings in a hotel in North Carolina, where we lived between April of 1989 and January of 1991. During 1990, a fired employee obtained detrimental materials from either the Florida Bar or Securities and Exchange Commission which he used to devastate our hotel by ruining our reputation in the area. Such materials were to be have been treated confidentially under then applicable Florida Bar rules.

56. Because almost all of my practice involved securities law, the Securities and Exchange Commission suspension was served as a suspension from all practice of law.

York State; however, after contacting the Florida Bar to verify whether or not I was in good standing,[57] we decided to return to Florida and did so in January of 1991. As a result of our return, we had to turn the North Carolina hotel over to a manager and as a result of our absence and the unfavorable publicity engendered by the materials released by the Securities and Exchange Commission or Florida Bar to the former employee, the hotel was forced into bankruptcy, costing my wife, our small sons and me a loss of approximately $400,000. Notwithstanding the loss of everything we owned we were satisfied that at least we could start our lives over again.

The Florida Bar began an investigation of the Warehouse matter during 1987, but never advised me thereof or permitted me to respond to the charges until I was notified that the matter had been referred to a grievance committee during 1988. I fully cooperated with the investigation and provided the counsel appointed to investigate the matter with all of my Warehouse files.[58]

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57. And having been informed that I was.

During June of 1989, the grievance committee held a hearing in South Florida. I requested that the hearing be postponed so that I could be represented by Mr. Chamberlin, but the request was denied, as a result of which I attended without legal counsel.[59] At the hearing, the Florida Bar took up all of the time and I was not permitted to present a rebuttal, rather, the committee afforded me an opportunity to present my case in writing.[60] I prepared a voluminous submission which was tendered to the committee in July of 1989, and the committee was

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58. All such files, together with all Florida Bar files pertaining thereto for the initial two years of the investigation were apparently lost by the Florida Bar. I was to find that out for the first time during the Florida Bar hearing.

59. The Florida Bar asserted that I had no legal right to counsel at that time, and that even permitting me to participate in the hearing was discretionary.

*60. Interestingly, a member of that committee, Steve Josias, was a banking industry lobbyist who was featured in a television magazine report for his role in a South Florida banking scandal (*i.e.*, he was a member of Senator Graham's staff while he was lobbying for and representing CenTrust, one of Florida' largest S&L fiascoes). He, of course, has never had to answer for any resulting ethical violations.*

to reconvene and afford me an opportunity to respond to questions. I was never afforded such opportunity, rather, evidently during September of 1989, the committee authorized the initiation of proceedings against me.

Despite the provisions of rules requiring the Florida Bar to promptly initiate disciplinary proceedings, it did nothing for almost two years. The Florida Bar never informed me of the grievance committee decision; rather, in response to my inquiry as to my status it provided me with a written certification that I was in good standing. As a result, rather than resuming my law practice in New York State, my family and I returned to Florida.

I resumed my Florida practice by forming an association with G. Richard Chamberlin, who had successfully represented me in the Securities and Exchange Commission 2e proceedings, and shortly thereafter, with the Belleview, Florida, firm of Houston & Houston, P.A.

Mr. Chamberlin had been representing the Gallaghers in Warehouse related proceedings before the Securities and Exchange Commission, which were decided against them during July of 1991. The Gal-

laghers requested that I assist them in their appeal of the Securities and Exchange Commission decision to the United States Court of Appeals for the Eleventh Circuit, and requested that we represent them on a *quasi pro bono* basis, since they had no way of earning a living. My wife and I were very apprehensive about such role since we had reason to fear retaliation; however, we felt that it was our ethical and moral duty to assist fellow victims of the Warehouse scam and despite our fears, I became co-counsel.[61]

I proceeded to formulate an appellate strategy which concentrated heavily on the responsibility of Barnett Bank for the improper closing. Within weeks after I prepared the appellate brief, the Florida Bar filed its complaint in this matter. It was so hastily prepared that it contained a number of unauthorized counts and was not signed by the presiding officer of the grievance committee, as required by the applicable rules of procedure.[62]

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61. Of course, the Gallaghers were advised of potential conflicts, which they waived in writing.

62. Indeed, it was never even presented to him for review, as required by the applicable rules of procedure.

I immediately had to shift my attention thereto and was precluded from meaningful participation in the Gallagher's appeal.[63]

The Florida Bar's initial tactic involved precluding me from introduction of any evidence by claiming that the 2e decision automatically resulted in a violation of Florida Bar ethical obligations. It obtained an order from the judge appointed as referee limiting issues at trial to the appropriate discipline After one costly year of litigation, the Supreme Court reversed the order and directed that a complete hearing be held at which all matters would be considered *de novo*.

During such interim, the Florida Bar acknowledged, without excuse, that it had not informed me of the grievance committee decision, which apparently was never put in writing, and that its complaint contained numerous unconstitutional *ex post facto* counts, which it voluntarily dropped.

It based the remaining allegations on repealed dis-

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63. That appeal was subsequently unsuccessful.

ciplinary rule 1-102(A)(6),[64] which provided as follows: "*A lawyer shall not "[e]ngage in any other conduct that adversely reflects on his fitness to practice law.*" The phrase "any other" makes it clear that the proscribed conduct is something other than that defined in the other five subsections of DR1-102(A), but provides utterly no guidance as to what such conduct might be. Its catch all nature is sufficient to permit the Florida Bar to disbar any attorney it or its cronies find objectionable, on virtually any grounds they can imagine. It is therefore constitutionally deficient and the Florida Bar's prosecution thereunder should not have been permitted.[65]

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64. DR1-102(A)(6) was not included in the revised rules governing the Florida Bar promulgated in 1987. However, the Florida Supreme Court refused to follow its prior rulings to the effect that repeal without a savings clause or substantial re-enactment of a rule regulating conduct renders it inapplicable, even in then pending cases. See Fort v Fort, 104 So.2d 69 (DCA 1, 1958); Gevant v Florida Real Estate Comm., 166 So.2d 230 (Fla., 1964); Pensacola & A.R. Co. v State, 1903, 45 Fla. 86; 33 So. 985, 986; and, State ex rel. Arnold v Revels, 109 So.2d 1 (Fla., 1959). Such refusal deprived me of my rights to due process and equal protection guaranteed by the constitutions of the United States and the State of Florida.

65. See Webb v Department of Professional Regulation, Board of Professional Engineers, 595 So.2d 1103

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During the time that the order to limit issues at trial was under appeal, I attempted to obtain discovery from the Florida Bar. The Florida Bar resisted and obtained a protective order, the result of which was that I was limited to five interrogatories, unresponsive responses to requests for admission, and limited documents.[66]

After reversal of the order to limit issues at trial, the referee scheduled a final hearing, which was set to conform with the vacation schedule of Florida Bar counsel. While I had been forced to conduct proceedings on my own due to financial difficulties, Richard Chamberlin, my former partner and the attorney most familiar with Warehouse matters as a result of his role in the Gallagher proceedings and my several cases, agreed to conduct my defense at the hearing. My law partner, Larry D.

(5th DCA 1992); and, Delk v Department of Professional Regulation, 595 So.2d 966 (5th DCA 1992). See also D'Alemberte v Anderson, 349 So.2d 164 (1977); and, State v Wershow, 343 So.2d 605 (1977).

66. At that time, the Florida Bar failed to disclose that the massive quantity of documents I had provided in 1988 and all of the Florida Bar files for the initial two years of the investigation had "disappeared."

Houston, volunteered to assist him as to technical evidentiary issues.[67] Prior to the hearing I provided the referee and Florida Bar counsel with a long list of potential witnesses, including attorneys employed by the Florida Bar.[68]

When the hearing was convened, I introduced Mr. Chamberlin and Mr. Houston, and advised the referee that they would be assisting me in my defense. Mr. Chamberlin produced a written notice of appearance but because of his anticipated limited role, Mr. Houston did not. The Florida Bar counsel immediately objected to their participation, insisting that I had to conduct the proceeding myself. He further objected that I intended to call Mr. Chamberlin as a witness,[69] and that he could not both serve as a witness and counsel. The referee of-

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67. Mr. Houston had only minimal familiarity with the matter and no knowledge of the legal technicalities involved.

68. Important to establish the basis for the delay in initiating the proceedings and to determine whether Barnett Bank or the Securities and Exchange Commission had been improperly involved therewith.

69. And that if I did not, he would.

fered me a choice as to how I was to use Mr. Chamberlin, and I indicated that I needed him to cross examine Mr. Bremer.[70] The referee than asked the Florida Bar counsel if he intended to call Mr. Chamberlin as a witness, and he indicated that he would call him as a rebuttal witness. Based on such stated intention, the referee ruled that Mr. Chamberlin could not represent me and ordered him from the room. Florida Bar counsel renewed his objection as to Mr. Houston, but the referee indicated that if Mr. Houston entered a written notice of appearance, he could proceed, without a continuance.

The exclusion of the Mr. Chamberlin from the trial based on a motion by the Florida Bar claiming that it intended to call such counsel as a rebuttal witness[71] violated my rights to due process guaranteed by the United States[72] and Florida[73] Constitutions. Such exclusion was

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70. He was critical in that role, since he was fully familiar with all our planned rebuttal, so that, if forced to elect, I had to have him as my attorney.

71. Which it failed to do and never discussed with such counsel.

72. See amendments Five, Six and Fourteen to the United States Constitution.

critically prejudicial.[74]

The Florida Bar presented five witnesses at the final hearing: Bremer, Richmond, Caruncho, the attorney who presided at the grievance committee hearing, and a purported expert.

Bremer's testimony conflicted with his prior affidavits, with the testimony of numerous witnesses to the

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73. Due process is guaranteed by Section One, Article Nine of the Florida Constitution, which provides that "No person shall be deprived of life, liberty or property without due process of law, or be twice put in jeopardy for the same offense ...." It is amplified by Sections Nine and Sixteen thereof to specifically guarantee the right to counsel. Assistance of counsel includes consultation and understanding of the accused's case before a trial, a consideration of his special interests in the cross-examination of witnesses and defensive evidence and in the making of argument and otherwise, see Collingsworth v Mayo, 173 F.2d 695 (1949). The denial of a reasonable opportunity to obtain counsel and to confer with him prior to trial is a denial of due process as contemplated by both the Florida and United States Constitutions, see Cash v Culver, 120 So.2d 590 (1960). The guarantees provided in Section One, Article Sixteen, were available to me in Florida Bar disciplinary proceedings, see, e.g., *Weathers v Davis, 196 So. 487 (1940).*

74. Such prejudice was impliedly admitted in the Florida Bar's brief to the Supreme Court, where it criticized the Petitioner's conduct of the hearing in not calling rebuttal witnesses or introducing exculpatory evidence.

Securities and Exchange Commission (including, most notably, Gary Granai), and with the information in transcripts of his own taped conversations. Bremer also testified that at the closing, no one, including me, believed that anything improper was being undertaken.

Richmond's testimony provided no support for the Florida Bar; however, he indicated that I had arrived at the closing late, and only then provided the so called disbursement letter. He further testified that such disbursement instructions had already been provided to Barnett Bank by Bremer, Granai or Gallagher.

Joe Caruncho, who had assisted Gallagher, Bremer and Granai, to prepare for a closing on the morning of April 19, 1985, by preparing a pre-closing checklist, testified that he thought the closing occurred at our offices that morning (*there is no dispute that he was mistaken, since the closing took place the following Monday, at Barnett Bank*), and that because Warehouse had counsel present, he assumed that we were representing the underwriter. However, on cross examination he admitted that prior to that Friday, he had never heard of

Warehouse (despite the fact that we had weekly staff meetings at which all pending firm projects were discussed); that no one had specifically indicated to him that my firm was representing the underwriter; and, that his role had involved no substantive review of any materials, rather, it was limited to preparation of a list of documents that the underwriting agreement indicated would be provided at the closing. More importantly, he testified at the Florida Bar Final Hearing that Bremer or Granai had promised to provide a certificate or something verifying that the Bremer indictment had been dropped and that I had always instructed my legal staff to assure that full and complete disclosure of all material matters had to be provided in all Securities and Exchange Commission matters.

The presiding officer of the grievance committee admitted that he had not seen the complaint until recently, but that, although his memory was dim, the complaint seemed to reflect the recommendations of the grievance committee.

The Florida Bar's expert witness testified that:

1. Underwriter's counsel was an expert, as that term was defined for purposes of exhibit 24 of Item 601 of Securities and Exchange Commission Regulation SK;
2. As a condition to the use of such counsel's name in a prospectus, such counsel was required to file a consent to the use of his name in a registration statement;
3. Because of such status and the consent requirement, counsel to the underwriter could not be replaced without an amendment to the registration statement.

Based on such testimony, the expert concluded that since no amendment disclosing a change in underwriter's counsel had been filed, I had remained as underwriter's counsel throughout the offering, and as an expert, was responsible for monitoring the offering and, either forcing the registrant to file amendments I deemed appropriate, or notifying the Securities and Exchange Commission that the issuer and underwriter might be in violation of securities laws.

Such testimony was contradicted by Securities and Exchange Commission Rule 436(e), which provided that: "*"Where counsel is named as having acted for the underwriter or selling security holders, no consent will be required by reason of his having being named as having acted in such capacity.*" Indeed, it has been uniformly recognized that, except for the matters dealt with in legal opinions filed as exhibits to registration statements, legal counsel involved in a public offering are not experts for purposes of registration statement liability.[75] It is indisputable that

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75. See the Florida Bar's 1987 continuing legal education program publication entitled Responsibilities and Liabilities of Corporate Directors, Officers and Attorneys, *at pages 5.9, 5.10, 7.18, 7.19, 7.20, 7.21, 7.24, 7.25, 7.35, 7.36, 7.37, 7.38, 7.39., 7.42, 7.44, 7.55 and 7.46.*

See also, Association of the Bar of the City of New York, Report by Special Committee on Lawyer's Role in Securities Transactions, *32* The Business Lawyer *1879 (1977); Cooney,* The Registration Process: The Role of the Lawyer in Disclosure, *33* The Business Lawyer *1329 (1978); Report of the Special Ad Hoc Committee of the ABA's Section of Corporation, Banking and Business Law,* SEC Standard of Conduct for Lawyers: Comments on the SEC Proposal (Release No. 37 The Business Lawyer *915 (1982); and,* Statement of the Section of Corporation, Banking and Business Law in Response to Securities Exchange Act Release No. 16045 (July 31, 1979), *35* The Business Lawyer *605 (1980).*

my firm neither filed any consents to the use of its name nor prepared, provided or filed any opinions concerning the Warehouse offering with anyone.[76]

Over my objections, the referee permitted introduction of the final judgments in the Warehouse injunction and 2e cases, both of which should have been excluded because they involved lower standards of proof. The referee, based on the objections of Florida Bar counsel excluded large quantities of evidence that I sought to introduce, including all evidence involving the Gallagher case,[77] and, all evidence involving the ethical standards for attorneys in securities matters published by the American Bar Association and the Association of the Bar of the City of New York. In addition, because the Florida Bar counsel was unable to obtain copies of the

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76. Such fact was admitted by the Securities and Exchange Commission during oral argument before the United States Court of Appeals for the Eleventh Circuit in the case of Gallagher & Company v Securities and Exchange Commission.

77. Including the admission by the Securities and Exchange Commission that I had provided no closing opinions.

Bremer tape transcripts directly from the Securities and Exchange Commission, he did not permit the filing of copies thereof that I had obtained from the Gallaghers.

Because he was totally unfamiliar with the case and had never spoken to any of the witnesses Mr. Chamberlin intended to call, my legal counsel only called one witness, me. Consequently many rebuttal witnesses to Mr. Bremer's testimony (*e.g.*, Ms. Daniels and Messrs. Jenkins, Baldrica and Scherer) were never called to testify, Their examination, and an examination of the financial reports for Messrs. Jenkins, Baldrica and Scherer would have clearly demonstrated that Bremer's testimony that I assisted or attempted to assist in locating loans to effect a fraudulent closing was totally false. In addition, being unprepared and unfamiliar with the applicable law, Mr. Houston failed to rebut the testimony of the Florida Bar's expert through use of the text of Securities and Exchange Commission rules 436(e) or 478, or the Florida Bar's own materials from the lecture outline for the Florida Bar's 1987 continuing legal education program entitled *Responsibilities and Liabilities of Corporate Direc-*

tors, Officers and Attorneys.

I specified at the Final Hearing that Mr. Chamberlin was essential to the cross examination of Bremer.[78] Had Mr. Chamberlin been permitted to act as counsel to me, he would have, on cross examination of Mr. Bremer, introduced the affidavits filed by Mr. Bremer in the injunction action against me.[79] Bremer provided the Securities and Exchange Commission with three separate affidavits for use in the Warehouse litigation; however, the Securities and Exchange Commission withheld the first affidavit provided by Bremer because it authenticated the Bremer tapes which the Securities and Exchange Commission wanted to exclude from consideration in conjunction with its motion for summary judgment.[80] The affidavits were included in the joint ap-

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78. See pages 7 and 8 of the record of the Final Hearing.

79. With which Mr. Chamberlin, but not Mr. Houston, was totally familiar.

80. As did Bar Counsel in the Florida Bar Case. Those are the same transcripts that the Securities and Exchange Commission was supposed to deliver through Bar Counsel for the hearing, at the instruction of the referee to Bar Counsel, but failed to provide.

pendix filed by me with the United States Court of Appeals for the Second Circuit in *Securities and Exchange Commission v Calvo*, 891 F.2d 457 (2d Cir. 1989), at pages A486 through A491 (the "Third Bremer Affidavit"), A685 through A713 (the "First Bremer Affidavit") and A714 through A727 (the "Second Bremer Affidavit"). A review of excerpts therefrom demonstrates material differences between them and between them and the testimony of Bremer at the Final Hearing. For illustrative purposes:

(a) Paragraph 6 of the Second Bremer Affidavit and Paragraph 16 of the First Bremer Affidavit admit that I was only involved with post effective amendment number one to the Warehouse registration statement.[81]

(b) Paragraph 16 of the First Bremer Affidavit admits that I was never counsel to Warehouse.[82]

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81. There were three subsequent post effective amendments filed with which I was not involved. The last such post effective amendment was the one declared effective.

(c) Paragraphs 24 and 25 of the First Bremer Affidavit authenticate the Bremer Tapes.

(d) Paragraphs 32, 33 and 34 of the First Bremer Affidavit and paragraphs 15 and 16 of the Second Bremer Affidavit concerning knowledge of the correct closing date were totally contradicted by Bremer's testimony at the Final Hearing where he first claimed no one knew about the erroneous closing date, and then, when cross examined as to his discussion of the proper closing date with Manuel Crespo of the Securities and Exchange Commission (and shown his taped transcript of the call), changed his story to indicate that Francesca Daniels had calculated the proper closing date in my presence.[83]

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82. The Florida Supreme Court found, without support in the record other than the erroneous testimony of the Florida Bar's expert (see Securities and Exchange Commission rules 436[e] and 478), that I represented all of the parties.

83. Denied by Ms. Daniels in an affidavit.

(e) Paragraphs 38 through 42 of the First Bremer Affidavit and paragraphs 21 and 22 of the Second Bremer Affidavit discuss my purported role in assisting Bremer to raise emergency loan funds through Messrs. Jordan and Burckhardt and Ms. Daniels, starting in January of 1985, indicating that I had suggested such loans.[84] At the Final Hearing, Bremer admitted that Messrs. Jordan and Burckhardt and Ms. Daniels had been introduced solely in conjunction with solicitation of legitimate broker dealer participants in the offering (as contrasted with his claims in paragraphs 40 and 42 of the First Bremer Affidavit), and further, that Bremer conceived of the loan plan himself, and, never discussed it with me; rather, he claimed that his attorney, Granai explained the proposed Bremer

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84. Such claims were denied by Messrs. Jordan and Burckhardt and Ms. Daniels in affidavits filed in the Injunction Action.

stock purchases to me on April 19, 1985.[85]

(f) In paragraph 55 of the First Bremer Affidavit and paragraph 29 of the Second Bremer Affidavit, Bremer discusses the Rolands lunch with no mention of Paul C. Jenkins having been introduced by me as a potential lender. He also admits that I was accompanied by Nina Gordon, an attorney employed by me.

(g) In paragraph 32 of the Second Bremer Affidavit, Bremer claims that he met with me during the afternoon of April 19, 1985, after lunch, however, at the Final Hearing he admitted that I had to leave lunch early because of appointments, and that he did not see me again until running into me at Shooters. No such meeting was reflected in the First Bremer Affidavit.

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85. Excerpts from the testimony of Mr. Granai to the Securities and Exchange Commission read into the record of the Florida Bar Case make it clear that the scenario described by Mr. Granai to me differed drastically from that described by Bremer.

(h) In paragraph 31 of the Second Bremer Affidavit Bremer admits that Richmond contacted the escrow agent directly on Friday, April 19, 1985, to confirm his receipt of funds from escrow, three days prior to delivery of my letter of disbursal instructions.

(i) In paragraph 46 of the First Bremer Affidavit, Bremer discusses the incident with Kolonosky at the closing, which he could not recall at the Final Hearing.[86]

(j) In paragraph 51 of the First Bremer Affidavit, Bremer admits that he and Granai flew to Florida on April 18, 1985, rather than earlier as testified to at the Final Hearing. In that paragraph he also admitted that there was a discussion of meeting use of proceeds requirements (although he, unlike Mr. Granai, Gal-

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86. That incident's sole purpose was to make me believe that the Warehouse offering was oversubscribed, and thus not to question the Bremer stock purchase. Had the Kolonosky stock purchase been accepted, then, as far as I knew, the minimum offering would have been exceeded excluding Bremer's stock purchase.

lagher and me, claimed such discussion was for deception purposes)[87] at an April 19, 1985 meeting in my offices, a discussion he flatly denied at the Final Hearing.

(k) In both the First Bremer Affidavit and the Second Bremer Affidavit, Bremer on several occasions reflects meetings with Beer,[88] who he claimed acted as "blue sky counsel" in the Warehouse offering. The Bremer tapes disclose that Beers' partner Wilkes was informed by Granai in early May of 1985 that the offering closed short, however, in paragraphs 75 and 76 of the First Bremer Affidavit, Bremer claims that Beer was shocked to discover such

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87. Since the story appears to have been told only to Mr. Gallagher and me, we had to have been the targets of that deception.

88. The attorney who as of the September 24, 1984 retainer letter with Bremer, replaced my firm in the Warehouse offering. An investigation of the Warehouse matter examining correspondence from the Beer firm to the National Association of Securities Dealers, Inc., and Securities and Exchange Commission, on behalf of the underwriter, would make his role obvious.

fact during a June 13, 1985 meeting, immediately after which he retained attorney Kaplan and, together with Beer, contacted the Justice Department and Securities and Exchange Commission.

(l) In paragraph 79 of the First Bremer Affidavit Bremer claims that I was told about his indictment but was unconcerned (he also testified to that effect at the Final Hearing);[89] *however, in paragraph 47 of the Second Bremer Affidavit, Bremer swore that I "had expressed the opinion that a post effective amendment should be filed disclosing my [Bremer's] indictment, and that I [Bremer] should resign from Warehouse." Furthermore, in paragraph 48 of the Second Bremer Affidavit, Bremer admits that he agreed to resign.*

Such drastic differences as to material facts make it clear that Bremer lied on numerous occasions, and that

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89. That was clearly the conclusion of the Florida Supreme Court in the Florida Bar Case.

when considered with the consistency of my testimony and the prior testimony of the Gallaghers and Granai, and, the affidavits of Messrs. Jordan, Burckhardt, Jenkins, Baldrica, Scherer and, on two occasions, Ms. Daniels, my version of the events is the most credible.[90] It also makes it clear that Bremer's testimony at the prior Warehouse proceedings was unreliable, casting significant and material doubts on the results thereof and on the conclusions based thereon.

Most important of all, in paragraph 52 of the First Bremer Affidavit, Bremer flatly admits[21] *that I believed that*

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90. If I had been a participant in the Bremer conspiracy, I certainly would not have objected to the exclusion of the Bremer indictment from Granai's opinion, or, as testified to by the Florida Bar's witness, Caruncho, suggested that Bremer provide a certification that it had been dropped; I would not have differentiated the treatment of Richmond (as opposed to the other lenders) in the disbursal instructions; I would not have suggested the Granai trust arrangement, or thereafter, written to Granai asking that the promised documents be provided to Gallagher so that Granai could disburse the offering proceeds held in trust; or, I would not have advised Gallagher that Gallagher could not sell out the huge Bremer stock position, except in reliance on the dribble out provisions of Securities and Exchange Commission Rule 144.

91. Confirming the assertions in the Granai deposition that I was certain that the Bremer stock purchase was legal, and, confirming Bremer's testimony at the Final Hearing

the purchase of stock by Bremer (as explained to me) was unequivocably legal.

Mr. Chamberlin was not a witness to any facts material to the proceeding nor did he have any knowledge thereof, except as obtained when acting as legal counsel to me during the appeal of the injunction and the 2e proceeding, or to the Gallaghers, thus, he could not have provided any testimony at the Final Hearing unless the Gallaghers and I waived our rights to attorney client privilege. Because we did not, there was no basis for the use of Mr. Chamberlin as a witness by the Florida Bar, and, in fact, the Florida Bar never called Mr. Chamberlin as a witness or even interviewed him with that possibility in mind.[92]

I was severely prejudiced by my inability to use Mr.

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that, at the closing, I did not believe that anything improper was being undertaken. Consequently, at most, the Florida Supreme Court should have found that I misunderstood or mis-analyzed the Bremer proposal, as described to me by Granai.

92. The referee made no inquiry as to what evidence Mr. Chamberlin was to provide on behalf of the Florida Bar.

Chamberlin's services, specifically, in that I was left with Larry D. Houston, who had never interviewed any witnesses and was unfamiliar with the facts or law involved,[93] to conduct my defense.

I have a right to due process guaranteed by the Fourteenth, Sixth and Fifth Amendments to the United States Constitution, and by Sections Two, Nine and Sixteen of Article One of the Florida Constitution, which included the right to representation by counsel, in the Florida Bar Case. That right was violated,[94] and con-

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93. Assistance of counsel includes consultation and understanding of the accused's case before a trial, a consideration of his special interests in the cross-examination of witnesses and defensive evidence and in the making of argument and otherwise, see Collingsworth v Mayo, 173 F.2d 695 (1949). The denial of a reasonable opportunity to obtain counsel and to confer with him prior to trial is a denial of due process as contemplated by both the Florida and United States Constitutions, see Cash v Culver, 120 So.2d 590 (1960).

94. I was also not represented by counsel at the grievance committee hearing because the Florida Bar refused to grant a short continuance permitting attendance by my attorney. The only continuance in the Florida Bar Case granted to me was during the pendency of my successful appeal of the referee's decision limiting issues at trial. All of my other requests for postponements, even in the interests of clients facing federal criminal proceedings were rejected, while postponements to meet the Florida Bar's vacation schedule were liberally granted.

sequently such proceedings should have been considered a nullity.[95]

On December 7, 1992, the referee found me guilty of every allegation made by the Bar and recommended that I be disbarred, with all costs assessed against me.[96]

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95. *The right under the Florida Constitution to assistance of counsel cannot be rendered illusory or ineffective by a trial court's rulings, see Myles v State, 602 So.2d 1278 (1992). The case of Traylor v State, 596 So.2d 957 makes it clear that the evidence presented at the Final Hearing in violation of my right to representation by counsel is not competent evidence, and cannot be used to justify the Florida Supreme Court's decision in the Florida Bar Case.*

96. *All of the Florida Bar's costs were assessed against me, despite the fact that: (i) The Florida Bar's initial strategy of limiting issues at trial had been reversed by the Florida Supreme Court the previous year; (ii) The Florida Bar had been forced to drop a majority of the counts in its complaint against me when it found that they had not, in fact, ever been authorized, and would have violated my constitutional rights to due process; (iii) The testimony of Bremer at the Final Hearing was neither credible nor supportive of essential aspects of the Florida Bar's allegations, and, as in the case of Richmond, could have been presented without a personal appearance; and (iv) The Florida Supreme Court's decisions on factual issues appear to be based almost exclusively on the final decisions in the prior injunctive action and 2e proceeding. The Florida Supreme Court established the factors for assessment of costs in a case cited by the Florida Bar itself, The Florida Bar v McCain, 361 So.2d 700, 705 (Fla. 1978). Such factors should have led to a determination that, even if the Florida Bar was successful in its case, each party should*

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Chapter Six: The Appeal

I filed detailed briefs requesting that the Florida Supreme Court reject the referee's decision and attempted to supplement the record with materials that, because of Mr. Houston's unfamiliarity with the case, had not been provided at the final hearing. They included affidavits from Ms. Daniels and Messrs. Jenkins, Baldrica and Scherer refuting Bremer's testimony; the good standing certificate provided to me by the Florida Bar in 1990; and, excerpts from testimony and materials which the referee had improperly excluded at the final hearing.

On November 3, 1993, the Florida Supreme Court heard the case. The Florida Supreme Court was falsely led to believe by counsel to the Florida Bar during oral argument that I was offered a choice by the referee in the Florida Bar Case to either use G. Richard Chamberlin, Esquire, as a witness or as my attorney, and that I elected to use Mr. Chamberlin as a witness, although he was

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have borne its own costs. To decide otherwise violates the guarantees of equal protection contained in the Florida and United States Constitutions.

never called for such purpose. In fact, as demonstrated in the letter provided by Mr. Chamberlin to the Chief Justice immediately following the oral argument, when faced with such election I chose to use Mr. Chamberlin as my attorney; however, counsel to the Florida Bar indicated that he intended to call Mr. Chamberlin as a rebuttal witness, whereupon the referee disqualified Mr. Chamberlin and ordered him out of the room.[97]

On December 16, 1993, the Supreme Court, based almost exclusively on the Warehouse injunction decision, affirmed the referee's recommendations, finding that I represented all the parties in the Warehouse offering, that I was responsible for assuring the sale of the securities by April 7, 1985, and, that the expert's opinion concerning the applicable law was correct.

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97. My comments on page 8 of the record, lines 2 to 24, make it irrefutable that it was Mr. Whalen's stated intention of calling Mr. Chamberlin, as a witness, not the nonexistent election by me to do so, that led to his disqualification. The fact that I had formally and on a timely basis, prior to the hearing, advised the referee and Bar counsel that I intended to call him as a witness, did not impact the ability of the Florida Bar's counsel to participate in the proceeding.

On December 30, 1993, I filed a currently pending motion for rehearing based on numerous constitutional grounds, as well as the falsity of the comments made by the Florida Bar's counsel during oral argument. On February 10, 1994, the Supreme Court denied my motion, without comment.

Chapter Seven: Concluding Observations

I. Attorney Client Privilege

The Florida Supreme Court based its decision, in part, on a determination that my otherwise applicable duty of confidentiality, was superseded because the conduct of the participants in the Warehouse matter was criminal, regardless of whether or not a criminal proceeding was ever initiated. Bremer testified that at the closing, there was no intent by anyone to engage in any improper conduct, and that intent is a critical element in the commission of a crime.[98] Thus, not only has a criminal

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98. In essence the Florida Bar Case stands for the proposition that the attorney client privilege can be ignored if the attorney merely should have suspected that a client might not be telling the truth; whether or not the attorney, in fact, had such doubts!

action never been initiated, but the Florida Bar's own witness in chief has testified in a manner making such a determination inappropriate. All other participants in the Warehouse closing who have been subject to Securities and Exchange Commission proceedings have vigorously denied any wrongful intent. There is utterly no evidence indicating that I was aware that anyone intended to engage in criminal conduct, and therefore, the Florida Supreme Court's decision is wrong.[99]

II. Vulnerability of Victims

The Florida Supreme Court, addressing the issue of appropriate punishment, found the victims of the Warehouse closing to be especially vulnerable. The fact is that no evidence was introduced at the hearing by any purported victims. Without minimizing the seriousness of the fraud and misconduct perpetrated by Bremer (the

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99. The Florida Supreme Court indicated that I was obligated to notify investors of a number of facts, however, it ignored the fact that I could not, on my own, modify the Warehouse registration statement and that I had no way of knowing who the investors were. Furthermore, the timing involved and the overlapping hearing which the Florida Bar refused to reschedule made any such attempt impossible.

Florida Bar's chief witness), the fact is that there were no widows and orphans involved in the Warehouse matter. Investors in new issues are not vulnerable members of society, rather, securities laws as well as the know your customer rules of the National Association of Securities Dealers, Inc., wisely limit participation in new issues to sophisticated investors with substantial securities experience who, in addition, can afford the loss of their investment, a fact prominently reflected in the risk factor section of the registration statement.

A major portion of the non-Bremer investors invested through selected dealers who were licensed securities professionals and who were completely aware that the parties believed April 22, 1985, was the proper closing termination date. The bulk of the subscriptions, in fact, were submitted after April 7, 1985.

The Florida Supreme Court concluded that the Warehouse securities were worthless at the time they were issued. There was no support on the record for that conclusion. Rather, the facts demonstrate that from the time of closing until the termination of trading when the

Securities and Exchange Commission launched its actions, the Warehouse securities traded at a premium.[100] To this day, Bremer continues to claim that Warehouse was a legitimate company and presented investors with a reasonable investment opportunity.

The Florida Bar and its expert have taken the position that in making Warehouse related decisions, the only interest that should have been considered was protection of the new investors. However, Warehouse was an existing public company, with existing employees, and a large number of existing stockholders.[101] It would have been irresponsible to ignore their rights out of hand, and to have destroyed their company, if, in fact, there was a reasonable possibility that the factual allegations presented by Messrs. Bremer and Granai to Mr. Gallagher were accurate. In fact, if the factual allegations

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100. A small premium, unlike the wild overcharging that later permeated the penny stock market.

101. The Warehouse stockholders prior to the offering unaffiliated with Bremer were no more or no less vulnerable than those who invested during the 1984-1985 public offering.

presented by Messrs. Bremer and Granai to Mr. Gallagher were accurate and Mr. Gallagher had refused to close, then both Warehouse and its existing stockholders may well have had a cause of action against the underwriter for failure to use its best efforts to complete the offering.

III. The Florida Bar's Role

Perhaps the most incongruous aspect of the Florida Bar Case is the unrefuted fact that the Florida Bar played a direct role in the Warehouse closing fiasco. On April 22, 1985, the day of the Warehouse closing, the very same office of the Florida Bar that prosecuted the Florida Bar Case, had a date with me which it refused to break.

It is unfortunate that bureaucrats in general and the Florida Bar specifically have become so aggressive in their quest for victory that they disdain the courtesies attorneys normally grant each other. Those courtesies have permitted the efficient functioning of a judicial system where scheduling conflicts are the rule, rather than the exception. Such disdain, although technically unassailable, can have devastating consequences, like the

Warehouse case.

Whether or not I would have been able to more effectively participate in the Warehouse closing if I had been provided the time is speculative. Whether or not, given the brevity of available time, even if the Florida Bar had agreed to postpone its hearing on April 22, 1985, I would have elected to assume a role as underwriter's counsel is speculative. That I was not provided such opportunity, or the opportunity to engage in all of the due diligence and factual verification that the Florida Bar now claims was required, is not speculative. That the Florida Bar itself was the entity at least partially responsible for such failure is also not speculative.

While the Florida Bar cannot be blamed for the Warehouse fiasco, it is obvious that of all the agencies that have ever existed, it is most estopped from holding me responsible for that which it itself prevented me from doing.

IV. My Background

In reaching a decision in this matter and evaluating the veracity of the parties and witnesses, the Court should have noted that I have a history of striving for excellence in the practice of law and in my role in society.

My parents were unable to pay for my legal education, and, like many other minority lawyers, I worked my way through law school. I was a full time teacher, coached an equestrian team and headed two academic departments at the same time that I attended law school. Despite such additional responsibilities, I graduated in the top ten percent of my law school class with a substantial quantity of additional credit hours in topics I deemed important to my professional development.

Wanting to be the best possible lawyer, I thereafter immediately obtained an LLM degree, where I was again at the top of my class. While, at the time, Florida had no continuing legal educational requirements, I imposed them on myself and was designated in not one but two areas of the law.

I have always donated my time generously for the

benefit of my community and to assist those who cannot afford to pay for legal services. I was one of the featured speakers in the Florida Bar's program on corporate law in 1985, the year of the Warehouse closing, and during the twelve month period following the Warehouse closing, contributed more than $20,000 to help build the Greek Orthodox cathedral in Fort Lauderdale. Despite the pendency of the Florida Bar Case and the attendant demands on my time, I was a founding director of my local Kiwanis club, I served as the chairman and president of my county's parents' & schools' council and served on my local elementary school advisory council.[102] None of such activities were undertaken for purposes of generating professional clientele but rather, to comply with my perceived professional responsibilities to my community.

I also served as an unpaid presidential appointee to a United States Selective Service System Local Board[103]

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102. As a result of the decision in the Florida Bar Case, I have resigned from all such positions. However, I continue to make my time available to assist them on an informal basis.

103. An unpopular but critical job.

for years, both before and after the Warehouse matter.

These factors are not indicative of a person who takes his professional responsibilities lightly, or who meets the unprofessional profile in which the Florida Bar seeks to cast me; rather, they confirm the uncontested testimony of the many persons whose testimony on my behalf was presented to the referee in the Florida Bar Case.[104]

V. Improper Emotional Appeal to Ethnic Background

The referee in the Florida Bar Case found it important to make a factual finding that I am Colombian. He did so because, throughout the Warehouse related proceedings, the Securities and Exchange Commission and the Florida Bar[105] have made an issue of such fact. It is a shame that being Colombian is considered a negative factor in this country. That evaluation ignores the actual

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104. Although such testimony was totally ignored.

105. The Florida Bar cited numerous cases involving conviction of attorneys for narcotics crimes that had utterly no relevance to the proceeding, other than prejudicing the reader against Colombians by implying that we are all drug dealers.

nature of the Colombian people. It is intolerable that the Florida Bar used such factor as an element in its case and the Florida Supreme Court should not have aligned itself with such blatant impropriety; especially when the Florida Supreme Court's stated policy is that of encouraging an increase in the quantity, quality and role of minority attorneys in our legal system!

VI. Mitigating v Aggravating Circumstances

The Florida Bar, for the first time, during closing arguments, raised the issue of supposedly aggravating circumstances that justified the severe penalty of disbarrment. That issue was not only not plead in the Florida Bar Case, but no evidence in support thereof was properly introduced at the hearing. In fact, such allegation and argument was totally refuted by the only testimony on point, that being the testimony of Messrs. Stein, Lipson and Vogel, Father Nicholas Nick and Mrs. Laura Gallagher as to my impeccable good character, honesty and integrity; and, the admissions on cross examination by the Florida Bar's witnesses, that I had always insisted on full disclosure, never counseled im-

proper conduct and that, in Bremer's case, as reflected in his taped, post closing telephone conversations, that I would never permit anyone to do anything wrong. Indeed, Bremer's taped conversations with his attorney, Granai, after he had gone to the Justice Department, make it clear that, when I first came to suspect that anything might have been wrong with the Warehouse closing, my advice was that trading in Warehouse stock had to be stopped. Again, there was no support for the Florida Bar's argument in the record, and in fact, the evidence was overwhelmingly to the contrary. In addition, I (to my detriment in light of the loss of my materials by the Florida Bar), completely and promptly cooperated with the Florida Bar in its investigation of the Florida Bar Case; and, my state of mind was certainly unusually distracted by the pendency of the Florida Bar's hearing on the date of closing.

The Florida Supreme Court's conclusion that Warehouse was not an isolated instance is contrary to the evidence, especially in light of the excerpts from Bremer affidavits included as an exhibit to the Pending Motion

for Rehearing. All improprieties alleged occurred, if ever, during the period surrounding the weekend of April 19 through 22, 1985. No evidence of other similar acts was introduced.

In light of the foregoing, a weighting of mitigating versus aggravating factors clearly tilted materially in my favor.

VII. Reformation

Even if I had been provided all my constitutionally guaranteed due process rights, if repealed Disciplinary Rule 1-102(A)(6), remained a viable predicate for Bar actions, and, if the evidence at the final hearing supported a conclusion that I had violated Disciplinary Rule 1-102(A)(6), the Florida Supreme Court's conclusions regarding discipline would not be warranted. It would be unfair to subject me to discipline in addition to that already imposed by the Securities and Exchange Commission in the 2e proceeding, which was completed during July of 1990, more than three years ago. Under applicable Securities and Exchange Commission law, the Warehouse matter is no longer even a ripe disclosure

item as a result of the passage of time since the issuance of the Warehouse injunction, more than six years ago.

The Florida Bar introduced absolutely no evidence of any wrongdoing of any kind by me since conclusion of the Securities and Exchange Commission sanction period. On the contrary, all of the evidence affirmatively and forcefully asserted that I am an honorable and competent attorney and productive member of my community. The Florida Bar's inexcusable delays should not be permitted to again destroy my life, reputation and practice. If Bar discipline is imposed for the purpose of protecting the public or to rehabilitate, then none can be said to have been called for.

Respectfully submitted, this 8th day of May, 1994.

\s\William A. Calvo, III\s\

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